

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SHANNESE GREENAWAY and KAREL  
POWERY, individually and on behalf of all others  
similarly situated,

Plaintiffs,

-against-

APPLE-METRO, INC., d/b/a APPLEBEES; ZANE  
TANKEL and ROY RAEBURN,

Defendants.

Index No. 13 CV 2818(JS)(ARL)

**REPLY DECLARATION OF CRAIG  
R. BENSON IN SUPPORT OF  
DEFENDANTS' MOTION TO  
DISMISS, OR IN THE  
ALTERNATIVE, TO STAY  
PROCEEDINGS OR TO  
CONSOLIDATE**

CRAIG R. BENSON, an attorney admitted to practice before this Court, hereby declares as follows under penalties of perjury:

1. I am a shareholder in the firm of Littler Mendelson, P.C., counsel for Defendants in this matter and also in the cases entitled *Marin et al. v. Apple-Metro, Inc., et al.* Civil Action No. 12-CV-05274 (ENV)(CLP) (hereinafter referred to as the "Marin Action") and *Lebron, et al. v. Apple-Metro, Inc., et al.*, No. 13-CV-01411 (PKC) (hereinafter referred to as the "Lebron Action"). I am fully familiar with the facts and circumstances associated with this case, the Marin Action and the Lebron Action. I make the following Reply Declaration in Support of Defendants' Motion to Dismiss, or in the Alternative, to Stay Proceedings or to Consolidate.

2. On October 22, 2012, Carlos Marin filed a putative collective-class action against, among others, Defendants, asserting claims for unpaid wages under the Fair Labor Standards Act and New York Labor Law, on his behalf and all others similarly situated.

3. On March 12, 2013, the Marin Action plaintiffs filed an amended complaint, which Defendants answered on March 29, 2013.

4. On April 16, 2013, the Marin Action parties exchanged initial disclosures.

5. On April 17, 2013, the parties appeared for an initial conference before Magistrate Judge Cheryl L. Pollak. At the conference, Magistrate Pollak So Ordered a discovery schedule through June 17, 2013.

6. After the initial conference, the parties complied with the discovery schedule, including serving discovery requests and interrogatories on one another.

7. On March 1, 2013, Kenny Lebron and Martina Hanisch filed their own putative collective-class action against Defendants in the United States District Court for the Southern District of New York, asserting the same claims and seeking to represent the same individuals as those in the Marin Action.

8. On April 29, 2013, the Lebron Action plaintiffs amended their complaint

9. On May 16, 2013, Defendants requested permission to file a motion to dismiss based on the first-to-file rule. After receiving Defendants' letter, District Court Judge P. Kevin Castel issued an Order requesting an explanation from the Lebron Action plaintiffs why their collective and class action allegations should not be dismissed pursuant to the first-filed rule. In response to the Judge's request, the Lebron Action plaintiffs voluntarily dismissed their action, and opted to consolidate it with the first-filed Marin Action.

10. Thereafter, by letter dated June 13, 2013, the Marin Action plaintiffs proposed an amended discovery schedule to Magistrate Judge Pollak, which included dates (i) to amend the complaint to include the Lebron Action plaintiffs and allegations, (ii) for Defendants to answer the amended complaint, (iii) for the parties to serve discovery requests and (iv) for the parties to respond to each other's discovery requests. On June 14, 2013, Judge Pollak So Ordered the proposed amended discovery schedule.

11. On July 19, 2013, Defendants answered the Marin Action second amended complaint.

12. The Marin Action parties are currently engaged in discovery in accordance with the Marin Action Court's schedule.

Executed on August 2, 2013

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/s/  
Craig R. Benson